

**AGREEMENT BETWEEN PIXELPUSHERS, INC. (DBA CIVICA SOFTWARE) AND
THE CITY OF DURHAM FOR THE DEVELOPMENT, MAINTAINANCE AND
HOSTING OF THE DCHCMPO WEBSITE**

This contract is made, dated and entered into as of the ____ day of _____, 2014, by the City of Durham ("City") and Pixelpushers, Inc. DBA Civica Software ("Consultant" or "Civica"), a corporation organized and existing under the laws of the State of California, and authorized to do business in the State of North Carolina.

Sec. 1. Background and Purpose. The purpose of this contract is to create a comprehensive website designed to enhance the communication efforts of the DCHC MPO. The objectives of the project are to (1) host a website design kick-off meeting; (2) develop and evaluate design concept of the DCHCMPO website; (3) Website engineering and design integration; (4) Onsite content editor and system administrator training; and (5) Quality Assurance and Technology Transfer.

Sec. 2. Services and Scope to be Performed; Time of Performance. In this contract, "Work" means the services that the Consultant is required to perform pursuant to this contract and all of the Consultant's duties to the City that arise out of this contract. The Consultant shall provide professional services as specifically described in Exhibit A titled "Project Scoping and Cost Estimates," which includes listing and description of multiple Tasks and is incorporated into this Contract. The persons, entities, expenses, and general number of hours anticipated to be required to successfully perform the Work are as described in Exhibit A.1, "Person Hours Estimate by Task," which is also attached hereto and incorporated herein. Exhibit A.1 does not limit the hours necessary to perform the Work under this Contract; however, it does limit the total cost and compensation for each task identified. The total project cost, for all the Work, shall not exceed \$74,890. The Work shall be completed within six (6) months of initiation of the Work (after issuance of a Notice-to-Proceed), on approximately the time schedule shown in Exhibit A.2, "Schedule Hours by Task." The Transportation Planning Manager may extend this time period by up to six months, in writing, at his discretion. Any contract extension beyond six months from initiation of the Work (Notice-to-Proceed) must be approved in writing by the City Manager.

Sec. 3. Complete Work without Extra Cost. Consultant shall perform all Work and shall obtain and provide, without additional cost to the City beyond the total costs identified in Exhibit A1, all labor, materials, equipment, transportation, facilities, services, permits, expenses, and licenses necessary to perform the Work.

Sec. 4. Compensation. The City's payment for the Work or for any modifications of such Work shall not exceed \$74,890, unless this Contract is amended through action of the City Council. The City shall pay the Consultant for the Work as follows: Payment shall be for the percentage completion of the tasks performed and for a maximum amount for certain reimbursable expenses, all as shown in Exhibit A.1. Payment for tasks performed and associated expenses shall not exceed the amounts for completion of each individual task as shown on Exhibit A.1 unless the tasks are modified as described hereafter. Modifications that alter the tasks by redistributing the amount of work, and/or compensation for such work, within or amongst the tasks or subtasks may be made in writing by the Transportation Planning Manager, if the change in compensation does not exceed 15% for any particular task. Such changes may not increase the total compensation under the Contract, or generally reduce the amount of Work to be performed. Modifications that alter compensation for any task by more than 15% shall only be made through written authorization by the City Manager and a contract amendment to be approved by the parties, which amendment may be made on behalf of the City by the City Manager. The City

shall not be obligated to pay the Consultant any payments, fees, expenses, or compensation other than those authorized by this section and shown in Exhibit A.1.

Additional Services: The City may engage the Consultant in additional services related to this contract but not covered by the scope of services in Exhibit A.1 using the hourly rate schedule shown in Exhibit A2. Such services will be negotiated on a task order not-to-exceed basis to cover additional meetings or follow-on work related to or furthering the goals of the project and scope of services. The provisions in this contract shall apply to any subsequent task orders that may be issued by the City.

Sec. 5. Consultant's Billings to City. The Consultant shall send invoices to the City monthly or when each Task is completed, pursuant to this contract. Each invoice shall document, to the reasonable satisfaction of the City, such information as may be reasonably requested by the City. At a minimum each invoice shall include a progress report and document the nature of the work performed, the particular task to which the labor or expense is attributed, the total amount of compensation claimed for that task since the inception of the contract, a summary table showing amount invoiced and percent complete by task. Within thirty days after the City receives an invoice, the City shall send the Consultant a check in payment for all undisputed amounts contained in the invoice that have been billed in accordance with this Contract. Payment shall not be deemed acceptance of the work for purposes of the City's determination as to whether the Work is of acceptable quality. Notwithstanding any other provision of this contract, the City may withhold an amount consisting of 5 percent of the not-to-exceed figure in the contract until all Work has been performed and completed under the contract to the satisfaction of the City. No withholding shall occur for deliverables delayed due to City reviews, City lack of response to information requests deemed critical to complete a task, or due to third party reasons outside of the control of the Consultant.

Sec. 6. Insurance. Consultant shall maintain the insurance required by the City in Exhibit B.

Sec. 7. Performance of Work by City. If the Consultant fails to perform the Work in accordance with the Schedule Hours By Task, included as Exhibit A.2, or to a quality expected by the City, the City may, in its discretion, in order to bring the project closer to the schedule, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the City's rights and remedies.

Before doing so, the City shall give the Consultant notice of its intention and that the City may declare the Consultant in default if Consultant fails to cure such default within thirty (30) days of receipt of written notification, by certified mail, return receipt requested. In such event, the Consultant shall only be compensated for those tasks specified in Exhibit A or any individual task assignment herein, which has been completed as of the date of default. In the event partial payment has been made for such professional services not completed, the Consultant shall return such sums to the City within ten (10) days after receipt of written notice, by certified mail, return receipt requested, that said sums are due. In the event the City has previously paid the Consultant for work it has failed to properly complete as expected, the Consultant shall reimburse the City for additional costs incurred by the City in exercising its right to perform or cause to be performed some or all of the Work pursuant to this section. If the work has yet to be performed and no payment has been made, the City may reduce the total value of the contract to cover the work it shall perform or cause to be performed.

Sec. 8. Exhibits. The following exhibits are made a part of this contract:
Exhibit A, Scope of Work and Cost Estimates;
Exhibit A1, Person Hours Estimate by Task;
Exhibit A.2, Schedule Hours by Task; and
Exhibit B, Insurance

In case of conflict between an exhibit and the text of this contract excluding the exhibit, the text of this contract shall control.

Sec. 9. Termination for Convenience ("TFC"). (a) *Procedure*. Without limiting any party's right to terminate for breach, the City may, without cause, and in its discretion, terminate this contract for convenience by giving the Consultant written notice that refers to this section. TFC shall be effective at the time indicated in the notice. The City Manager may terminate under this section without City Council action. (b) *Obligations*. Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions and the section of this contract titled Trade Secrets and Confidentiality shall remain in force. At the time of TFC or as soon afterwards as is practical, the Consultant shall give the City all Work, including partly completed Work. In case of TFC, the Consultant shall follow the City's instructions as to which subcontracts to terminate. (c) *Payment*. Within 20 days after TFC, the City shall pay the Consultant a one hundred dollar TFC fee and for all Work performed except to the extent previously paid for. The City shall pay the part of the total cost for each Task that reflects the percentage of completion attained for that Task. The Consultant shall not be entitled to any payment except as stated in this section because of TFC, whether on the basis of overhead, profit, damages, other economic loss, or otherwise. With regard to Work performed through subcontracts, the City shall pay the Consultant an equitable amount for work completed by sub-consultants, but such payment shall not include profit for the Consultant.

Sec. 10. Notice. (a) All notices and other communications required or permitted by this contract shall be in writing and shall be given either by personal delivery, fax, or certified United States mail, return receipt requested, addressed as follows:

To the City:

Felix Nwoko, Transportation Planning Manager
Transportation Division, Department of Public Works
City of Durham
101 City Hall Plaza
Durham, NC 27701
The fax number is (919) 560-4561.
Email: felix.nwoko@durhamnc.gov

To the Consultant:

Mark Kelly, President & CTO
Civica Software
20101 SW Birch St, Suite 250
Newport Beach, CA 92660
Fax: (949) 851-1930
Email: mkelly@civicasoft.com

(b) Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this contract shall be deemed given at the time of actual delivery, if

it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

Sec. 11. Trade Secrets and Confidentiality. The request for proposals section titled "Trade Secrets and Confidentiality" shall apply to any Trade Secrets disclosed to the City during the process leading to the parties' entering into this Contract (including all of the Consultant's responses to the RFP), except as prohibited by North Carolina law. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Consultant under this contract. The word "Proposer" used in that section shall mean the "Consultant."

Sec. 12. Indemnification. (a) To the maximum extent allowed by law, the Consultant shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Consultant or sub-consultants or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.. In performing its duties under this subsection "a," the Consultant shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City. (b) Definitions. As used in subsections "a" above and "c" below -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). "Indemnitees" means City and its officers, officials, independent Consultants, agents, and employees, excluding the Consultant (c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract. (d) Survival. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Consultant under this contract. (e) Limitations of the Consultant's Obligation. If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection "a" above shall not require the Consultant to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

Sec. 13. Reserved.

Sec 14. Ownership of the MPO Website redevelopment Output Programs and Work Products. The MPO website project and associated work products, programs and graphic, including any incomplete work, shall be owned by the City. Civica Software shall be responsible for taking all steps necessary to provide such Work and incomplete Work to the City in such form as the City requests in accord with the Agreement.

Section 15. E-Verify Compliance. The contractor represents and covenants that the contractor and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (NCGS). The City is relying on this E-Verify Compliance section in

entering into this contract. The parties agree to this section only to the extent authorized by law. If this section is held to be unenforceable or invalid in whole or in part, it shall be deemed amended to the extent necessary to make this contract comply with NCGS 160A-20.1(b).

Sec. 16. Miscellaneous

(a) Choice of Law and Forum. This contract shall be deemed made in Durham County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.

(b) Waiver. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

(c) Performance of Government Functions. Nothing contained in this contract shall be deemed or construed so as to in any way stop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

(d) Severability. If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

(e) Assignment, Successors and Assigns. Without the City's written consent, the Consultant shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Consultant and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Consultant's duties that arise out of this contract and all of the City's claims that arise out of this contract. Without granting the Consultant the right to assign, it is agreed that the duties of the Consultant that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

(f) Compliance with Law. In performing all of the Work, the Consultant shall comply with all applicable law.

(g) City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONSULTANTS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONSULTANTS AND VENDORS UNDER CITY CONTRACTS.

(h) EEO Provisions. During the performance of this Contract the Consultant agrees as follows: (1) The Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Consultant shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Consultant shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions. (2) The Consultant shall in all solicitations or advertisement for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. (3) The Consultant shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding. (4) In the event of the Consultant's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend

this contract, in whole or in part, and the City may declare the Consultant ineligible for further City contracts. (5) Unless exempted by the City Council of the City of Durham, the Consultant shall include these EEO provisions in every purchase order for goods to be used in performing this contract and in every subcontract related to this contract so that these EEO provisions will be binding upon such sub-consultants and vendors.

(i) SDBE. The Consultant shall comply with all applicable provisions of Article III of Chapter 18 of the Durham City Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the Consultant to comply with Article III of Chapter 18 shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of Article III of Chapter 18, this contract, and State law. The Participation Plan submitted in accordance with that chapter is binding on the Consultant. Section 18-59(f) of Article III of Chapter 18 provides, in part, "If the City Manager determines that the Consultant has failed to comply with the provisions of the Contract, the City Manager shall notify the Consultant in writing of the deficiencies. The Consultant shall have 14 days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies." It is stipulated and agreed that those two quoted sentences apply only to the Consultant's alleged violations of its obligations under Article III of Chapter 18 and not to the Consultant's alleged violations of other obligations.

(j) Prompt Payment to Sub-consultants. Within 14 days of receipt by the Consultant of each payment from the City under this contract, the Consultant shall pay all sub-consultants (which term includes sub-consultants and suppliers) based on work completed or service provided under the subcontract. Should any payment to the sub-consultant be delayed by more than 14 days after receipt of payment by the Consultant from the City under this contract, the Consultant shall pay the sub-consultant interest, beginning on the 15th day, at the rate of 1% per month or fraction thereof on such unpaid balance as may be due. By appropriate litigation, sub-consultants shall have the right to enforce this subsection (a) directly against the Consultant, but not against the City of Durham. If the City's Project Manager determines that it is appropriate to enforce this subsection (a), the City of Durham may withhold the sums estimated by the Project Manager to be sufficient to pay this interest from progress or final payments to the Consultant. (b) Nothing in this section shall prevent the Consultant at the time of invoicing, application, and certification to the City from withholding invoicing, application, and certification to the City for payment to the sub-consultant for unsatisfactory job progress; defective goods, services, or construction not remedied; disputed work; third-party claims filed or reasonable evidence that such a claim will be filed; failure of the sub-consultant to make timely payments for labor, equipment, and materials; damage to the Consultant or another sub-consultant; reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed 10%. (c) The City's Project Manager may require, as a prerequisite to making progress or final payments, that the Consultant provide statements from any sub-consultants designated by the Project Manager regarding the status of their accounts with the Consultant. The statements shall be in such format as the Project Manager reasonably requires, including notarization if so specified.

(k) No Third Party Rights Created. This contract is intended for the benefit of the City and the Consultant and not any other person.

(l) Principles of Interpretation and Definitions. In this contract, unless the context requires otherwise: (1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The

words "include," "including," etc. mean include, including, etc. without limitation. (2) References to a "Section" or "section" shall mean a section of this contract. (3) "Contract" and "Agreement," whether or not capitalized, refer to this instrument. (4) Titles of sections, paragraphs, and articles are for convenience only, and shall not be construed to affect the meaning of this contract. (5) "Duties" includes obligations. (6) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (7) The word "shall" is mandatory. (8) The word "day" means calendar day.

(m) Modifications. Entire Agreement. A modification of this contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, except for minor modifications to the subtasks of the Work described in Section 4 above, a modification is not enforceable against the City unless the City Manager or a deputy or assistant City Manager signs it for the City. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

IN WITNESS WHEREOF, the City and the Consultant have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers.

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CITY OF DURHAM

_____ By: _____

Preaudit Certification: _____

Pixelpushers, Inc. DBA Civica Software.
ATTEST:

Secretary
(Affix Corporate Seal)

By: _____
President & CTO

State of _____

ACKNOWLEDGMENT BY PIXELPUSHERS,
INC. DBA CIVICA SOFTWARE

County of _____

I, a notary public in and for the aforesaid county and state, certify that
_____ Personally appeared before me this day and stated that he or she
is _____ Secretary of Pixelpushers, Inc. DBA Civica Software, a corporation, and
that by authority duly given and as the act of the corporation, the forgoing Contract with the City
of Durham was signed in its name by its Vice President, whose name is
_____, sealed with its corporate seal, and attested by him/herself as it
said Secretary or Assistant Secretary. This the _____ day of _____, 2013.

Notary Public

My commission expires:

EXHIBIT A – Scope of Work and Cost Estimates

See Attachment

EXHIBIT B

Insurance Requirement

Contractor shall maintain insurance not less than the following:

Commercial General Liability, covering

- premises/operations
- products/completed operations; this coverage shall be maintained for 6 years following the date of acceptance of the completed building by the City
- broad form property damage
- explosion, collapse, and underground hazards if the hazards exist in the performance of this contract
- contractual liability
- independent contractors, if any are used in the performance of this contract
- City of Durham must be named additional insured, and an original of the endorsement to effect the coverage must be attached to the certificate (if by blanket endorsement, then agent may so indicate in the GL section of the certificate, in lieu of an original endorsement); additional insured coverage shall be primary and non-contributing
- combined single limit not less than \$1,000,000 per occurrence; with an annual aggregate on not less than \$2,000,000.

Professional Liability, covering

- engineers and other industry related professional (employed or engaged by Contractor in the performance of this contract).
- covering claims arising out design work in connection with this contract
- self-insured retentions/deductibles in excess of \$25,000 must be approved by City Finance Director
- combined single limit not less than \$1,000,000 per claim applicable to this contract; if coverage is only available on claims made basis, then additional coverage requirements may apply, subject to review of City Finance Director
- this insurance shall be maintained for 6 years following the date of completion of the work under this contract

Workers' Compensation Insurance, covering

- statutory benefits;
- covering employees; covering owners, partners, and officers
- employers' liability, with a limit of not less than \$1,000,000.
- Waiver of subrogation in favor of the City of Durham

CONSULTANT shall have and maintain, during the period of this Agreement and Supplemental Agreements, Worker's Compensation and Employer's Liability Insurance with a company or companies authorized to do business in the State of North Carolina, for the protection of CONSULTANT's employees, as required by law of any employer.

Automobile Liability Insurance, covering

- Symbol 1, all vehicles

- combined single limit not less than \$1,000,000 per claim applicable to this contract
- City of Durham must be named additional insured; and an original of the endorsement to effect the coverage must be attached to the certificate (if by blanket endorsement, then agent may so indicate in the GL section of the certificate, in lieu of an original endorsement); additional insured coverage shall be primary and non-contributing
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Insurance shall be provided by:

- companies authorized to do business in the State of North Carolina
- companies with Best rating of A-VIII or better.

Insurance shall be evidenced by a certificate:

- providing notice to the City of not less than 30 days prior to cancellation or reduction of coverage
- certificates shall be addressed to:
City of Durham, North Carolina
attention: Finance Director
101 City Hall Plaza
Durham, NC 27701

both the insurance certificate and the additional insured endorsement must be originals and must be approved by the City's Finance Director before Contractor can begin any work under this contract